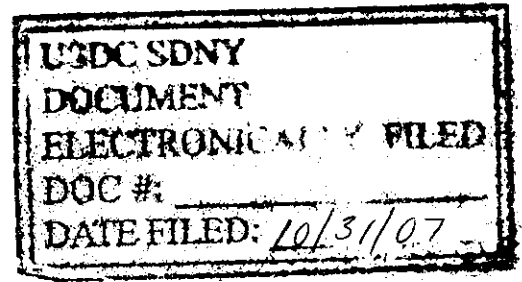


[NOT FOR PUBLICATION]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- X  
THERESA BERMAN & PHIL BERMAN, :

Plaintiffs, :

-against- :

07 Civ. 7859 (LAK) (AJP)

BELLEVUE SOUTH ASSOCIATES LLP, PHIPPS :  
HOUSE SERVICES INC., WILLIAM MULLIGAN, :  
JOSEPHINE PERRELLA, LISA BLOUNT, NEIL D. :  
SONNENFELDT, EDDIE WARREN, VINCENT :  
BANCEK, JULIA RODRIGUEZ, FJC SECURITY, :  
AMERICAN RED CROSS, THE CITY OF NEW :  
YORK - N.Y.P.D. & THE CITY OF NEW YORK - :  
F.D.N.Y., :

Defendants. :

**REPORT AND RECOMMENDATION**

----- X  
**ANDREW J. PECK, United States Magistrate Judge:**

**To the Honorable Lewis A. Kaplan, United States District Judge:**

Pro se plaintiffs Theresa Berman and Phil Berman commenced this removed action in Supreme Court, New York County, by filing a "Summons With Notice," without a complaint. By Order dated September 26, 2007, I directed plaintiffs to file a complaint by October 19, 2007. (Dkt. No. 5: 9/26/07 Order.) That Order also provided that: "Failure to file a complaint by October 19, 2007 will result in dismissal of this action." (Id.)

H:\OPIN\

The deadline has passed and plaintiffs have not filed a complaint or responded in any way to this Court's Order. Normally, I might do an "Order to Show Cause," giving plaintiffs one more chance to comply. However, both the certified and regular mail copies of my September 26, 2007 Order were returned by the Post Office as "Not Deliverable as Addressed, Unable to Forward" and "Return to Sender, Attempted - Unknown, Unable to Forward."

Accordingly, the Court should dismiss this action without prejudice.

**FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Lewis A. Kaplan, 500 Pearl Street, Room 1310, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge Kaplan (with a courtesy copy to my chambers). Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct. 825 (1992); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988);

McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: New York, New York  
October 31, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew J. Peck', written over a horizontal line.

**Andrew J. Peck**  
United States Magistrate Judge

Copies to: Theresa Berman & Phil Berman (Regular Mail)  
Jason D. Turken, Esq. (Fax)  
Craig Koster, Esq. (Fax)  
Judge Lewis A. Kaplan